

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Alexander Lai	Team: Team # 1	CCRB Case #: 201011291	<input checked="" type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Thursday, 08/12/2010 9:15 PM	Location of Incident: § 87(2)(b)	Precinct: 83	18 Mo. SOL 2/12/2012	EO SOL 2/12/2012	
Date/Time CV Reported Sun, 08/15/2010 5:44 PM	CV Reported At: CCRB	How CV Reported: On-line website	Date/Time Received at CCRB Sun, 08/15/2010 5:45 PM		

Complainant/Victim	Type	Home Address
§ 87(2)(b)	§ 87(2)(b)	§ 87(2)(b)
§ 87(2)(b)	§ 87(2)(b)	§ 87(2)(b)

Witness(es)	Home Address
§ 87(2)(b)	§ 87(2)(b)
§ 87(2)(b)	§ 87(2)(b)
§ 87(2)(b)	§ 87(2)(b)
§ 87(2)(b)	§ 87(2)(b)
§ 87(2)(b)	§ 87(2)(b)
§ 87(2)(b)	§ 87(2)(b)

Subject Officer(s)	Shield	TaxID	Command
1. DT3 Matthew Zito	29792	937792	NARCBBN
2. SGT William Sommer	02586	927538	NARCBBN

Officer(s)	Allegation	Investigator Recommendation
A.SGT William Sommer	Abuse: Sgt. William Sommer entered and searched § 87(2)(b) in Brooklyn.	§ 87(2)(b)
B.DT3 Matthew Zito	Force: Det. Matthew Zito pointed his gun at § 87(2)(b)	§ 87(2)(b)
C.DT3 Matthew Zito	Discourtesy: Det. Matthew Zito spoke rudely to § 87(2)(b)	§ 87(2)(b)
D.SGT William Sommer	Discourtesy: Sgt. William Sommer spoke obscenely and rudely to § 87(2)(b) and § 87(2)(b)	§ 87(2)(b)

Case Summary

§ 87(2)§ 87(2)(b) filed a complaint with the CCRB via online website on August 15, 2010.

On August 12, 2010, at approximately 9:15pm, § 87(2)(b) went to § 87(2)(b) in Brooklyn in response to calls by his tenants of police activity at that location. The subsequent events resulted in the following allegations:

- **Allegation A: Abuse** – Sgt. Michael Sommer entered and searched § 87(2)(b) in Brooklyn. § 87(2)(g)
- **Allegation B: Force** – Det. Matthew Zito pointed his gun at § 87(2)(b) § 87(2)(g)
- **Allegation C: Discourtesy** – Det. Matthew Zito spoke obscenely towards § 87(2)(b)
- **Allegation D: Discourtesy** – Sgt. Michael Sommers spoke obscenely and rudely towards § 87(2)(b) and § 87(2)(b) § 87(2)(g)

Results of Investigation

Civilian Statements

Complainant: § 87(2)(b)

§ 87(2)(b) is a § 87(2)(b)-old Hispanic male who stands 5'8", weighs 190 pounds, and has brown hair and brown eyes. He is § 87(2)(b)

CCRB Testimony

§ 87(2)(b) provided a phone statement on August 20, 2010, and he was interviewed at the CCRB on August 23, 2010 (encl. F1-9). § 87(2)(g)

On August 12, 2010, at approximately 8:30 pm, § 87(2)(b) was at home at § 87(2)(b) in Queens when he received several calls from his tenants at § 87(2)(b) in Brooklyn. One tenant on the § 87(2)(b) floor, § 87(2)(b) called and told § 87(2)(b) that there were police officers walking in and out of the building. § 87(2)(b) who was outside the building, called § 87(2)(b) three times about police activity as well, stating that officers were going into the hallways, and "back and forth" into the § 87(2)(b) floor. § 87(2)(b) the owner of the liquor store on the § 87(2)(b) floor of the building, called § 87(2)(b) about the same thing. § 87(2)(b) told the callers that he did not know why the police were there, and that they should let the officers do

their job. § 87(2)(b) decided not to go to § 87(2)(b) until § 87(2)(b) called a second time and said that she heard officers breaking down the cellar door. After the incident, § 87(2)(b) spoke with § 87(2)(b) who stated that during the incident, officers had asked if she knew § 87(2)(b). She replied that she knew § 87(2)(b) the complainant. It is unclear if the officers were referring to § 87(2)(b) or his brother, § 87(2)(b).

§ 87(2)(b) drove to § 87(2)(b) and parked his dark charcoal/black Chevrolet Avalanche near the front of the building on § 87(2)(b). An unmarked police car was parked next to § 87(2)(b)'s car (marked as "PO" in the enclosed map § 87(2)(b) drew during his interview) and § 87(2)(b) stood outside next to the police vehicle (marked as § 87(2)(b)) (encl. F5). Standing with § 87(2)(b) were § 87(2)(b) and § 87(2)(b) whom § 87(2)(b) knew from the neighborhood. The building has a side entrance on § 87(2)(b). § 87(2)(b) walked to that entrance and saw that the door was "busted in," with the top half of the door hanging by its hinges and the bottom half pushed to the side.

As § 87(2)(b) stood on the sidewalk and about one foot from the door entrance, he saw a plainclothes officer, identified as Sgt. William Sommer from Brooklyn North Narcotics, standing inside the building. Upon entering the building, there is a staircase going up approximately four feet from the doorway. Immediately to the right of the door was a baby carriage and where § 87(2)(b) initially saw Sgt. Sommer standing. To the right of the staircase was a locked door to the liquor store and an entrance to the cellar, which was opened. Sgt. Sommer was described as a white male, 5'9" to 5'10", 190-200 pounds, approximately 49 to 50 years old, with brown hair, and in plainclothes.

§ 87(2)(b) had not entered the building when an officer, identified via investigation as Det. Matthew Zito from Brooklyn North Narcotics, approached him on his right side with his weapon drawn. Det. Zito was described as a white male, 6'0", 190 pounds, with receding brown hair, and in plainclothes, wearing a football jersey and jeans. Det. Zito pointed his gun approximately 6 inches away from § 87(2)(b)'s face and said, "Who the fuck are you? What the fuck are you doing here?" § 87(2)(b) froze and replied that he was the landlord responding to phone calls made by his tenants. Det. Zito said, "Show me your fucking hands," and § 87(2)(b) raised his arms. § 87(2)(b) was holding onto two cell phones in his left hand and his car keys in his right hand. Det. Zito, still pointing his gun towards § 87(2)(b), pushed § 87(2)(b)'s right shoulder and upper right arm with his left elbow, causing him enter through the side entrance.

§ 87(2)(b) saw this exchange and said, "What are you doing? That's the landlord." After this incident, § 87(2)(b) spoke to § 87(2)(b) who stated that after he said that, an unidentified officer said, "Shut the fuck up. Get off the block." Two officers, possibly Sgt. Sommer and an officer identified via investigation as Det. Ian Cyrus of Brooklyn North Narcotics, had § 87(2)(b) and § 87(2)(b) go around the corner. Det. Cyrus was described as a black male, 5'7", 160 pounds, with "droopy eyes," and in plainclothes, wearing a baseball cap backwards.

As § 87(2)(b) attempted to explain that he was the landlord of the building, Det. Zito "smacked" § 87(2)(b)'s hands, causing his cell phones to fall. He then pushed § 87(2)(b) with his left elbow and he fell onto the staircase, landing on the left side of his body and left elbow. He did not sustain any injury from this fall. Det. Cyrus, who may have come from the cellar or hallway entrance, handcuffed § 87(2)(b) as he sat on the staircase. Sgt. Sommer emptied out § 87(2)(b)'s pants pockets and placed his belongings (his two cell phones, a wallet, car keys, a flash drive,

cash, and various papers) into a large envelope. § 87(2)(b) denied that officers retrieved any other items from his person. Sgt. Sommer said to § 87(2)(b) “You’re stupid. Why the fuck did you come here? You should’ve stayed at your house.” § 87(2)(b) replied that he was the landlord and came because he heard that police were breaking down the cellar door. He did not know why he was handcuffed, and the officers never told him why. When he asked why he was being arrested, Sgt. Sommer replied, “Because you’re stupid.”

Victim: § 87(2)(b)

§ 87(2)(b) is a § 87(2)(b)-old Hispanic male who stands 6’0”, weighs 197 pounds, and has black hair and brown eyes. § 87(2)(b)

CCRB Testimony

§ 87(2)(b) provided a phone statement on August 27, 2010, and an in-person statement at the CCRB on September 2, 2010 (encl. F10-15). § 87(2)(g)

On August 12, 2010, § 87(2)(b) along with § 87(2)(b) who was identified via investigation as § 87(2)(b) and § 87(2)(b) stood on the corner of § 87(2)(b) § 87(2)(b) in front of a liquor store. On a drawing created by § 87(2)(b) during his interview, § 87(2)(b) was marked as “§ 87(2)(b)” while § 87(2)(b) and § 87(2)(b) were marked as “§ 87(2)(b)” and “§ 87(2)(b)” respectively (encl. F13). An unmarked grey or blue jeep was parked between the side entrance of § 87(2)(b) and the liquor store, marked as “P car” in § 87(2)(b)’s drawing. A grey police van was parked at the dead end of § 87(2)(b) marked as “PO V.”

There were approximately six plainclothes officers standing in front of the side entrance, walking inside and outside the building. A person had exited the side entrance and the officers held the door open. Sgt. William Sommer, one of the officers walking around, was described as a white male, 6’1”, average build, in his 30s, with spiked blonde hair, and wore a blue jersey and jeans. Det. Matthew Zito, who stood outside in front of the jeep, was described as a white male, 6’1”, average build, in his 30s, had short black hair, and wore a black shirt and jeans. Det. Ian Cyrus, who was inside the van, was described as a black male, 5’6 to 5’7”, and stocky.

§ 87(2)(b) heard a loud banging sound emanating from the side entrance, which led to his believing that the officers were attempting to break open a door inside the building, although he did not see this occur.

Approximately an hour after officers had initially arrived at the location, and 15-20 minutes after the officers were banging on a building door, § 87(2)(b) arrived. § 87(2)(b) did not see what happened to § 87(2)(b) after he was pushed because he still stood at the sidewalk corner with § 87(2)(b). § 87(2)(b) meanwhile, had walked around and stood across the street, marked by an asterisk and an “§ 87(2)(b)” on § 87(2)(b)’s drawing. § 87(2)(b) said to Det. Zito that § 87(2)(b) was the landlord, but Det. Zito replied that he did not care. In § 87(2)(b)’s phone statement, he stated that when Det. Zito pushed § 87(2)(b) and § 87(2)(b) remained standing with him on the liquor store corner. After Det. Zito pushed § 87(2)(b) Det. Cyrus exited from his van and ran into the side entrance. From the time that § 87(2)(b) arrived and Det. Zito pushing him, one minute had elapsed.

Sgt. Sommer exited from the side entrance and walked towards § 87(2)(b) and § 87(2)(b) and said, “Police officers here - can you please leave the fucking block? Leave the block. Leave

the fucking block. There's a crime scene over here. You got to leave the fucking block. You're not supposed to be here. Go home - go do something else." In § 87(2)(b)'s phone statement, he stated that the officers told them to leave the premises and Sgt. Sommer asked, "How can you guys walk up to a crime scene when there's officers here?" § 87(2)(b) may have told the officers that § 87(2)(b) was the owner of the building, but § 87(2)(b) was unsure. § 87(2)(b) initially stated that Sgt. Sommer replied, "We don't care. Shut up." Later in the call, § 87(2)(b) stated that Sgt. Sommer responded by saying, "No ya'll can't be doing that shit, walking towards a crime scene." § 87(2)(b) walked away to a gas station located on Halsey Street and § 87(2)(b). He did not know where § 87(2)(b) or § 87(2)(b) went or did.

Witness: § 87(2)(b)

Inv. Lai called § 87(2)(b) on August 27, 2010, and he provided a phone statement (encl. F16). § 87(2)(b)

On August 12, 2010, § 87(2)(b) was at his brother's liquor store to help out. He stood on the corner with his friends § 87(2)(b) and § 87(2)(b) when he saw plainclothes officers. There was a white van with a male officer in the driver seat, and an SUV with tinted windows. § 87(2)(b) also saw a male individual in handcuffs standing outside.

An officer went into the liquor store and asked § 87(2)(b)'s brother, § 87(2)(b) for the keys to the building's basement. § 87(2)(b) provided the keys and opened the door to the basement but mentioned that he only owned half of the basement area. The other half of the basement was blocked off and had another entranceway. § 87(2)(b) assumed that since the officers wanted to get into the basement that they were looking for something.

After hearing banging noises that led him to believe officers were breaking in the basement door, § 87(2)(b) called § 87(2)(b) and informed him. Det. Cyrus and Sgt. Sommer stood within the basement lobby area, and Det. Zito stood by the unmarked SUV. Det. Zito was described as a white male wearing jeans and a t-shirt.

Det. Zito told § 87(2)(b) to lie on the floor. § 87(2)(b) asked why, and he asked him a second time. § 87(2)(b) began to tell Det. Zito that § 87(2)(b) was the owner of the building, and he said that this was none of his business and told him, "Get out of here before I arrest you." Other officers from the lobby told § 87(2)(b) and § 87(2)(b) to leave. After all the officers left, § 87(2)(b) saw a door within the lobby broken into pieces.

Witness: § 87(2)(b)

Inv. Lai spoke with § 87(2)(b) over the phone on August 31, 2010 (encl. F17). § 87(2)(b)

§ 87(2)(b) stood with his bicycle outside on the corner of the liquor store with § 87(2)(b) and a male individual he did not know. § 87(2)(b) owns a garage across the street from the liquor store.

§ 87(2)(b) remembered Sgt. Sommer entering the liquor store and asking questions to people but he did not hear what he asked. § 87(2)(b) believed Sgt. Sommer was one of the officers that were attempting to break into the basement.

Det. Zito told § 87(2)(b) to “get on the ground,” and § 87(2)(b) asked why and that he was checking his building. Det. Zito told him to “get on the fucking ground.” § 87(2)(b) and § 87(2)(b) who were still standing by the liquor store corner approximately 10 feet away, said to Det. Zito that § 87(2)(b) was the landlord. Sgt. Sommer exited from the same entrance and told § 87(2)(b) and § 87(2)(b) to leave because they were “interfering with police investigation.”

Other Civilian Statements

A statement from § 87(2)(b) was not obtained. Civilian statements have shown that § 87(2)(b) was at the location with § 87(2)(b) and § 87(2)(b) instead of § 87(2)(b). Although § 87(2)(b) stated otherwise, all other statements identified § 87(2)(b) as present at the corner of § 87(2)(b) § 87(2)(b) § 87(2)(g).

NYPD Statements:

Subject Officer: DET. MATTHEW ZITO

Det. Zito is a § 87(2)(b)-old white male who stands 6’2”, weighs 230 pounds, and has brown hair and brown eyes. On August 12, 2010, he was on-duty from 2:27pm to 11:00pm, assigned to narcotics enforcement within the confines of the 83rd Precinct, in plainclothes and in an unmarked vehicle with Sgt. Sommer.

Memo Book

On August 12, 2010, at 9:00pm, Det. Zito had one under arrest at § 87(2)(b). At 9:30pm, he had another under arrest at the same location, in the basement apartment. At 9:35pm, Det. Zito had one under arrest at § 87(2)(b) hallway (encl. G4).

Arrest Report & Criminal Court Complaint

On August 12, 2010, at approximately 9:30pm, § 87(2)(b) was found in possession of a plastic bag containing approximately two pounds of marijuana. Det. Zito saw the plastic bag coming out of a vent which was in the wall of the basement of § 87(2)(b).

Det. Zito saw § 87(2)(b) exit a vehicle and run towards the basement apartment of § 87(2)(b). Det. Zito identified himself as a police officer to § 87(2)(b) and told him that he could not enter because police officers were in the basement. § 87(2)(b) entered the hallway of the building and Det. Zito said a second time that he could not enter. He then pushed Det. Zito and said that he was the owner of the apartment and the building, and attempted to enter the basement. § 87(2)(b) resisted arrest by struggling with police and refusing to be handcuffed.

CCRB Testimony

Det. Zito was interviewed at the CCRB on December 1, 2010 (encl. G13-15).

Det. Zito and Sgt. Sommer parked their unmarked SUV approximately 10 feet in front of the side entrance of § 87(2)(b) on § 87(2)(b). Det. Zito observed an individual, identified through investigation as § 87(2)(b) pacing around the vestibule and hallway of the building. He did not see any other individuals around the vicinity. Given that the area was a known drug-prone location coupled with § 87(2)(b)'s actions, Det. Zito believed that § 87(2)(b) was attempting to buy drugs. The officers decided to approach him after observing him for approximately one minute. As Det. Zito and Sgt. Sommer exited and approached, § 87(2)(b)

threw marijuana to the hallway ground. Simultaneously, an individual shut the door from inside an apartment where § 87(2)(b) had walked from. Det. Zito immediately arrested § 87(2)(b). In the hallway, he heard noise emanating from the basement apartment door that an individual was inside, moving objects. Det. Zito suspected that evidence was being destroyed and knocked on the door but no one answered.

Sgt. Sommer entered the front entrance of the liquor store next door and asked the store owner if they had access to the basement. While Sgt. Sommer was inside the store, Det. Zito stood outside the hallway vestibule. There were approximately 4-5 officers from Det. Zito's field team that arrived on the scene but he did not recall who was present. The store owner allowed Sgt. Sommer and Det. Zito to enter the store's basement, which was accessed via a sidewalk entrance outside and to the right of the hallway vestibule. Officers who Det. Zito did not recall entered the basement also.

Upon going downstairs, the basement was divided by drywall separating the store from the side where Det. Zito had heard an individual moving objects. Individuals on the other side of the drywall could still be heard during the time the officers entered the store's side of the basement. Det. Zito and Sgt. Sommer went to the back of the basement, and saw a 2x2 foot vent fixed to a wall. A plastic zip-lock bag with marijuana was being thrown through the vent from the other side. The officers realized that the place from which the bag was thrown was the basement apartment. Det. Zito recovered the bag of marijuana.

After approximately 10 minutes, the officers exited the store's basement, and Det. Zito secured the bag of marijuana, which was later vouchered, in their SUV. An officer knocked on the basement apartment door a second time. After no one responded, members of Det. Zito's field team used a Kelly tool, sledgehammer, and ram to open the door. Det. Zito did not recall the officers who opened the door, which took less than a minute to access. Det. Zito remained outside in front of the hallway vestibule as this was done. Upon entering the basement apartment, officers found § 87(2)(b) who was subsequently arrested.

§ 87(2)(b) parked his car in front of Det. Zito's unmarked SUV, exited, and ran towards the basement apartment where the field team had entered. Det. Zito, who was standing by the vestibule, followed § 87(2)(b) into the hallway and pointed his gun at § 87(2)(b) while saying, "Stop. Police." Det. Zito stated that he pointed his gun towards § 87(2)(b) because § 87(2)(b) who was being "loud and boisterous," ran towards the field team from behind. The store owner stood on the street corner approximately 25 feet away but Det. Zito denied that any person approached or spoke to him at this time. § 87(2)(b) did not enter the basement apartment but continued to approach the apartment after Det. Zito instructed him to stop. § 87(2)(b) was "screaming and yelling" statements that Det. Zito did not recall, and Det. Zito attempted to handcuff him in the hallway. § 87(2)(b) flailed his arms, refusing to be handcuffed, and Det. Zito pushed him to the ground, and an officer from the field team who he did not recall assisted in successfully arresting him after approximately one minute. Before the officers left the scene, the basement apartment door was secured.

Det. Zito denied using profanity and denied hearing any officer use profanity during this incident. Det. Zito denied calling § 87(2)(b) "stupid" and denied using the word "fuck" towards him.

During the interview, Det. Zito was shown video footage taken from the liquor store during the incident. Det. Zito identified Sgt. Sommer in footage taken from "Epis4Cam#3" at the time

20:35:35. Det. Zito also affirmed in footage taken from “Epis1Cam#8” at 21:35:00 as the point when § 87(2)(b) drove and parked his black car in front of the vestibule and approached the basement apartment. He explained in the same video that an officer standing by an unmarked SUV approached § 87(2)(b) from behind. Det. Zito was unable to determine if this officer was himself or another officer.

Subject Officer: SGT. WILLIAM SOMMER

Sgt. Sommer is a § 87(2)(b)-old white male who stands 6’0”, weighs 190 pounds, and has blonde hair and blue eyes. On August 12, 2010, he was on-duty from 2:25pm to 11:00pm, assigned as a narcotics supervisor with Det. Zito, in plainclothes and in an unmarked grey Mitsubishi Endeavor SUV.

Memo Book

On August 12, 2010, at 8:20pm, Sgt. Sommer was en route to the corner of § 87(2)(b). At 9:00pm, an individual was under arrest at that location. At 9:30pm, a second individual was under arrest in the basement of § 87(2)(b). At 9:35pm, a third individual was under arrest in the hallway of § 87(2)(b) (encl. G18).

CCRB testimony

Sgt. Sommer was interviewed at the CCRB on February 1, 2011 (encl. G19-21). § 87(2)(g)

After § 87(2)(b) was arrested, Sgt. Sommer went to the liquor store and spoke to an employee about the building’s layout, in case the officers returned for a future investigation. The store employee, who informed him that two individuals lived in the basement of § 87(2)(b) led Sgt. Sommer to the rear of the store, revealing storage and office rooms. When they were led to the liquor store basement via the cellar doors, Det. Lorne Kanover and Det. Michael Separ arrived at the location but Sgt. Sommer did not recall if any additional officers were present or if they accompanied him to the basement, save for Det. Zito.

Sgt. Sommer made the decision to enter the basement of § 87(2)(b) by using a ram through the wooden door in order to apprehend the individual who threw the marijuana through the vent. Sgt. Sommer was unsure but he believed that he was the officer who used the ram to gain entrance. The door was damaged after the ram was used, but it was secured at the conclusion of this incident. Det. Zito stood outside nearby the vestibule of the building during this time, watching over § 87(2)(b). Sgt. Sommer, along with Det. Kanover and Det. Separ, entered the basement of § 87(2)(b) where they found and arrested § 87(2)(b).

After § 87(2)(b) was arrested, Sgt. Sommer heard a “commotion” outside, which sounded like Det. Zito giving verbal commands and an explanation of the situation to an individual, who was not complying. He added that it sounded like Det. Zito was telling the individual to stop from entering the building, but he did not hear any statements made by the individual. Sgt. Sommer exited the basement and saw § 87(2)(b) in handcuffs, accompanied by Det. Zito within the building lobby. Sgt. Sommer did not recall if § 87(2)(b) was lying on the ground or standing when he first saw him. He also did not recall seeing any visible injuries on § 87(2)(b) and did not recall hearing him complain of any injuries. Det. Zito explained that he tried to tell § 87(2)(b) that he was not allowed into the building because there was an ongoing police investigation, but § 87(2)(b) did not listen and attempted to get past him.

Approximately five to six civilians standing nearby the liquor store approached closer to Sgt. Sommer's vehicle as Det. Zito was securing the recovered marijuana. Sgt. Sommer approached them and told them to get away from the truck and to step back, asking them for a minute before he could explain the situation after everything was under control. The civilians complied and walked back to the liquor store; Sgt. Sommer did not recall statements they made towards him. He did not recall using profanity or the word "fuck" towards the civilians.

NYPD Documents

Command Log

The 83rd Precinct's command log shows that on August 12, 2010, at 10:25pm, Det. Zito brought in § 87(2)(b) and § 87(2)(b) (encl. H1-2).

Property Voucher

Voucher § 87(2)(b) indicates that \$1,981.00 was vouchered from § 87(2)(b) as forfeiture evidence "as it is believed to be proceeds of narcotics transactions." A piece of mail with § 87(2)(b)'s name and a plastic piece of an item that is illegible were also vouchered as arrest evidence, according to voucher § 87(2)(b). Finally, referencing voucher § 87(2)(b) two cell phones, one cell phone case, one black thumb drive, and three keys on a keyring belonging to § 87(2)(b) were vouchered for safe keeping. § 87(2)(b)'s wallet, papers, and two credit cards were returned to him (encl. H3-6).

Other Evidence

Video recordings of the incident date were acquired from the liquor store at § 87(2)(b). It does not show any FADOs.

Arrest for Incident and Disposition

§ 87(2)(b) [§§ 86(1)(3)&(4)] [§ 87(2)(c)]

§ 87(2)(b) BADS indicated that as of February 16, 2011, § 87(2)(b)'s arrest report was sealed.

Status of Civil Proceedings

§ 87(2)(b) has filed a Notice of Claim with the City of New York and the New York City Police Department as of March 28, 2011, with regard to the incident (encl. I16-18). The claim is for "personal, physical, and emotional injuries sustained by § 87(2)(b) as a result of intentional, reckless, and/or negligent conduct by agents, servants and employees of the city of New York, and the New York City Police Department."

Civilians Criminal History

- [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]
[redacted]
 - [redacted]
[redacted]
 - [redacted]
[redacted]
- [redacted]
[redacted]
 - [redacted]
[redacted]
 - [redacted]
[redacted]
[redacted]
[redacted]
[redacted]

Civilians CCRB History

- § 87(2)(b) has filed the following CCRB complaint: § 87(2)(b)
[redacted]
- This is the first CCRB complaint filed by § 87(2)(b) (encl. B2).

Subject Officers CCRB History

- Sgt. Sommer has been a member of the service for ten years and there are three substantiated CCRB allegations against him (encl. A1-2).
- Det. Zito has been a member of the service for six years and there are three substantiated CCRB allegations against him (encl. A3-4).

Conclusion

Identification of Subject Officers

Det. Zito affirmed interacting with § 87(2)(b) during this incident. Sgt. Sommer was identified by a combination of physical descriptions and actions attributed to him as described by civilian statements.

Investigative Findings and Recommendations

Allegation A: Abuse – Sgt. Michael Sommer entered and searched § 87(2)(b) in Brooklyn.

It is undisputed that Sgt. Sommer, under his authority, entered the basement of § 87(2)(b) along with other members of his field team. § 87(2)(b) the only occupant in the basement, was arrested, and quantities of marijuana were recovered.

The police are allowed to prevent the potential destruction or removal of evidence where they do not have the time to obtain a warrant, pursuant to the exigency theory. Several factors are considered with such cases. One such factor is the nature and degree of urgency involved and the amount of time needed to obtain a warrant. *People v. Rivera*, 574 N.Y.S.2d 81 (3rd Dep't 1991). A reasonable belief that the contraband is about to be removed is also another factor considered. *People v. Lewis*, 462 N.Y.S.2d 884 (1st Dep't 1983). Additionally, information indicating that

the possessors of the contraband are aware that the police are on their trail is considered. People v. Thomas, 514 N.Y.S.2d 817 (3rd Dep’t 1987). These factors are considered entirely, and the existence of just one of these factors does not constitute exigent circumstances. People v. Kross, 580 N.Y.S.2d 269 (N.Y. Crim. Ct. 1992).

According to police statements, as § 87(2)(b) was arrested near the vestibule of § 87(2)(b) an individual shut the door from inside the basement apartment where § 87(2)(b) had walked from. Det. Zito heard noise emanating from the basement apartment door that an individual was inside, moving objects. He suspected that evidence was being destroyed and knocked on the door but no one answered. Sgt. Sommer stated that he wanted to find out if the marijuana recovered from § 87(2)(b) was bought by a person within the building, and began a canvass. A liquor store employee led the officers to the store’s basement, which was shared by the basement apartment, but divided by a wall. While in the basement, the officers saw a bag of marijuana being pushed out through an opening of a wall from the basement apartment into the liquor store side. Sgt. Sommer also heard movement emanating on the other side and he believed that an individual may have been trying to tamper with or destroy evidence, or attempting to flee. He made the decision to enter the basement apartment by using a ram through the wooden door in order to apprehend the individual who threw the marijuana through the vent.

§ 87(2)(g)
§ 87(2)(b) If Det. Zito’s account of the incident is referenced, § 87(2)(b) (hereinafter § 87(2)(b)) immediately shut the basement apartment door as the officers apprehended § 87(2)(b) § 87(2)(b) knew that police were present at his doorstep, but knocks to the basement door went unanswered. § 87(2)(g)

§ 87(2)(g)
§ 87(2)(b)
§ 87(2)(b)
§ 87(2)(b)

Allegation B: Force – Det. Matthew Zito pointed his gun at § 87(2)(b)

Det. Zito affirmed drawing and pointing his firearm towards § 87(2)(b) as he approached the side entrance of § 87(2)(b)

The Police Department permits an officer to draw his firearm and point it at another person if the officer has a reasonable fear for his own or another’s safety. Police Department v. Gliner, OATH Index No. 955/00 (Sept. 6, 2000) The totality of circumstances is considered in assessing the reasonableness of the officer’s actions. *Id.*

§ 87(2)(g)
§ 87(2)(b)

§ 87(2)(g)
[REDACTED]

Allegation C: Discourtesy – Det. Matthew Zito spoke obscenely towards § 87(2)(b)
Allegation D: Discourtesy – Sgt. Michael Sommer spoke obscenely and rudely towards

§ 87(2)(b) and § 87(2)(b)

§ 87(2)(b) stated that Det. Zito said to him, “Who the fuck are you? What the fuck are you doing here?” and told him to “show [his] fucking hands.” § 87(2)(b) also stated that Sgt. Sommer said that he was “stupid” and asked, “Why the fuck did you come here?” § 87(2)(b) stated that Sgt. Sommer said, “Police officers here - can you please leave the fucking block?” In another instance, § 87(2)(b) mentioned that Sgt. Sommer said, “ya’ll can’t be doing that shit, walking towards a crime scene.”

§ 87(2)(b) and § 87(2)(b) did not mention such language was used during this incident, and Det. Zito and Sgt. Sommer denied making those obscene and rude remarks. § 87(2)(g)

[REDACTED]

Team: _____

:

Investigator: _____
Signature Print Date

Supervisor: _____
Title/Signature Print Date

Reviewer: _____
Title/Signature Print Date

Reviewer: _____
Title/Signature Print Date